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SENATE BILL**No. 773**

Introduced by Senator Speier and Assembly Member Jackson

(Principal coauthor: Assembly Member Alquist)

(Coauthors: Assembly Members Chan and Goldberg)

February 23, 2001

An act to add Division 1.2 (commencing with Section 4050) to the Financial Code, relating to financial privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 773, as amended, Speier. Financial institutions: confidential consumer information.

Existing law provides for the regulation of banks, savings associations, credit unions, and industrial loan companies by the Department of Financial Institutions and by certain federal agencies, as specified.

This bill would enact the Financial Information Privacy Act of 2002, which would require a financial institution, *as defined*, to provide specified notice to, and to obtain the consent of, a customer before disclosing to or sharing confidential consumer information, as defined, with any nonaffiliated 3rd party, subject to certain exceptions. The bill would also require a financial institution to provide its customers with a written form that allows the customer the opportunity to request, among other things, that the financial institution refrain from sharing the confidential consumer information of the customer with an affiliate of the financial institution or outside companies. The bill would provide that a financial institution is not required to provide this written form to its customers if the financial institution does not disclose any confidential consumer information to any nonaffiliated 3rd party or to any affiliate.

This bill would provide that a financial institution shall not deny a consumer a financial product or service because the consumer has not provided the necessary consent that would authorize the financial institution to disclose or share confidential consumer information with affiliates of the financial institution. The bill would require a financial institution to comply with the consumer's request regarding confidential consumer information within 45 days of receipt of the request.

This bill would provide that the bill would not apply to disclosures between certain types of member-owned financial institutions and its affiliates provided that certain requirements are met. The bill would also provide that a financial institution may disclose confidential consumer information to *an affiliate or* a nonaffiliated 3rd party in order for it to perform certain services on behalf of the financial institution if specified requirements are met.

The bill would provide that confidential consumer information may be released in order to identify or locate missing children, witnesses, criminals and fugitives, parties to lawsuits, and missing heirs and that it would not change existing law regarding access by law enforcement agencies to information held by financial institutions.

~~This~~

The bill would also provide for disclosure of confidential consumer information under various other specified circumstances.

The bill would enact other related provisions.



The bill would also provide various civil remedies and administrative fines and civil penalties for negligent, or knowing and willful violations of these provisions.

The bill would become operative on October 1, 2002, except that penalties under the bill would not become operative until July 1, 2003.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Division 1.2 (commencing with Section 4050) is added to the Financial Code, to read:

DIVISION 1.2. FINANCIAL INFORMATION PRIVACY
ACT

4050. This division shall be known and may be cited as the Financial Information Privacy Act of 2002. This division shall become operative on ~~July 1~~ October 1, 2002.

4051. (a) The Legislature intends for financial institutions to provide their customers notice and meaningful choice about how consumers' personal information is shared or sold by their financial institutions.

(b) It is the intent of the Legislature in enacting the Financial Information Privacy Act of 2002 to afford persons greater privacy protection than those provided in Public Law 106-102, the federal ~~Gramm, Leach, and Bliley~~ Gramm-Leach-Bliley Act, and that this division be interpreted to be consistent with that purpose.

4052. For the purposes of this division:

(a) "Confidential consumer information" means personally identifiable financial information (1) provided by a consumer to a financial institution, (2) resulting from any transaction with the consumer or any service performed for the consumer, or (3) otherwise obtained by the financial institution. Confidential consumer information does not include publicly available information that *the financial institution has a reasonable basis to believe* is lawfully made available to the general public from (1) federal, state, or local government records, (2) widely distributed media, or (3) disclosures to the general public that are required to be made by federal, state, or local law. Confidential consumer

1 information shall include any list, description, or other grouping
2 of consumers, and publicly available information pertaining to
3 them that is derived using any nonpublic personal information
4 other than publicly available information, but shall not include any
5 list, description, or other grouping of consumers, and publicly
6 available information pertaining to them that is derived without
7 using any confidential consumer information.

8 (b) “Personally identifiable financial information” means
9 information (1) that a consumer provides to a financial institution
10 to obtain a product or service from the financial institution, (2)
11 about a consumer resulting from any transaction involving a
12 product or service between the financial institution and a
13 consumer, or (3) that the financial institution otherwise obtains
14 about a consumer in connection with providing a product or
15 service to that consumer. Any personally identifiable information
16 is financial if it was obtained by a financial institution in
17 connection with providing a financial product or service to a
18 consumer, including the fact that a consumer is a customer of a
19 financial institution or has obtained a financial product or service
20 from a financial institution. Personally identifiable financial
21 information includes all of the following:

22 (1) Information a consumer provides to a financial institution
23 on an application to obtain a loan, credit card, or other financial
24 product or service.

25 (2) Account balance information, payment history, overdraft
26 history and credit or debit card purchase information.

27 (3) The fact that an individual is or has been a customer of a
28 financial institution or has obtained a financial product or service
29 from a financial institution.

30 (4) Any information about a financial institution’s consumer if
31 it is disclosed in a manner that indicates that the individual is or has
32 been the financial institution’s consumer.

33 (5) Any information that a consumer provides to a financial
34 institution or that a financial institution or its agent otherwise
35 obtains in connection with collecting on a loan or servicing a loan.

36 (6) Any *personally identifiable financial* information collected
37 through an Internet cookie or an information collecting device
38 from a Web server.

39 (7) Information from a consumer report.



1 (c) “Financial institution” generally means any institution
2 engaging in financial activities as described in Section 1843(k) of
3 Title 12 of the United States Code and doing business in this state.
4 An institution that is *not* significantly engaged in financial
5 activities is *not* a financial institution. The term “financial
6 institution” does not include the Federal Agricultural Mortgage
7 Corporation or any entity chartered and operating under the Farm
8 Credit Act of 1971 (12 U.S.C. Sec. 2001 et seq.), provided that the
9 entity does not sell or transfer confidential consumer information
10 to a nonaffiliated third party. The term “financial institution” does
11 not include institutions chartered by Congress specifically to
12 engage in a proposed or actual securitization, secondary market
13 sale, including sales of servicing rights, or similar transactions
14 related to a transaction of the consumer, as long as those
15 institutions do not sell or transfer confidential consumer
16 information to a nonaffiliated third party. The term “financial
17 institution” does not include any person licensed as a dealer under
18 Article 1 (commencing with Section 11700) of Chapter 4 of
19 Division 5 of the Vehicle Code that enters into contracts for the
20 installment sale or lease of motor vehicles pursuant to the
21 requirements of Chapter 2b (commencing with Section 2981) or
22 2d (commencing with Section 2985.7) of Title 14 of Part 4 of
23 Division 3 of the Civil Code and assigns substantially all of those
24 contracts to financial institutions within 30 days. The term
25 “financial institution” does not include any provider of
26 professional services, or any wholly owned affiliate thereof, that
27 is prohibited by rules of professional ethics or applicable law from
28 voluntarily disclosing confidential client information without the
29 consent of the client.

30 (d) “Affiliate” means any person or entity that, directly or
31 indirectly, controls, is controlled by, or is under common control
32 with another person or entity. A franchisor, including any affiliate
33 thereof, shall be deemed an affiliate of the franchisee for purposes
34 of this division. *A financial institution and one or more of its*
35 *affiliate entities shall be deemed a single entity for purposes of this*
36 *division to the extent that (1) the financial institution and its*
37 *affiliated entities are offering the same type of functional products*
38 *or service or offering multiple types or products or services in*
39 *conjunction with and as part of a financial advisory business and*
40 *(2) the operations of the financial institution and its affiliated*



1 *entities are integrated and such integration is necessary to provide*
2 *such products or services.*

3 (e) “Nonaffiliated third party” means any entity that is not an
4 affiliate of, or related by common ownership or affiliated by
5 corporate control with, the financial institution, *but does not*
6 *include a joint employee of that institution and a third party.*

7 (f) “Consumer” means an individual resident of this state who
8 obtains or has obtained a financial product or service from a
9 financial institution that is to be used primarily for personal,
10 family, or household purposes, or that individual’s legal
11 representative. For purposes of this division, an individual is not
12 a consumer of a financial institution solely because he or she is (1)
13 a participant or beneficiary of an employee benefit plan that a
14 financial institution administers or sponsors, or for which the
15 financial institution acts as a trustee, insurer, or fiduciary, (2)
16 covered under a group or blanket insurance policy or group
17 annuity contract issued by the financial institution, ~~or~~ (3) a
18 beneficiary in a workers’ compensation plan, (4) *a beneficiary of*
19 *a trust for which the licensee is a trustee, or (5) a person who has*
20 *designated the financial institution as trustee for a trust* provided
21 that (A) the financial institution provides all required notices and
22 rights required by this division to the plan sponsor, group or
23 blanket insurance policyholder, or group annuity contractholder
24 and (B) the financial institution does not disclose to any affiliate
25 or any nonaffiliated third-party confidential consumer
26 information about the individual except as authorized in Section
27 4056. A consumer does not include an individual who obtains
28 products or services for business, commercial, or agricultural
29 purposes.

30 (g) “Control” means the direct or indirect possession of the
31 power to direct or cause the direction of the management and
32 policies of another entity. Control includes any of the following:
33 (1) ownership or power to vote 25 percent or more of the
34 outstanding shares of any class of voting security of a company,
35 acting through one or more persons, (2) power in any manner over
36 the election of a majority of the directors, or of individuals
37 exercising similar functions, or (3) the power to exercise a
38 directing influence over the management of policies of a company.
39 *However, for purposes of the application of the definition of*
40 *control as it relates to credit unions, a credit union has a*



controlling influence over the management or policies of a credit union service organization (CUSO), as that term is defined by state or federal law or regulation, if the CUSO is at least 67 percent owned by credit unions, and for purposes of the application of the definition of control to a financial institution that is subject to regulation by the United States Securities and Exchange Commission, a person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company is presumed to control the company, and a person who does not own more than 25 percent of the voting securities of a company is presumed not to control the company, and a presumption regarding control may be rebutted by evidence, but in the case of an investment company, the presumption shall continue until the United States Securities and Exchange Commission makes a decision to the contrary according to the procedures described in Section 2(a)(9) of the federal Investment Company Act of 1940.

(h) “Necessary to effect, administer, or enforce” means the following:

(1) The disclosure is required, or is a usual, appropriate, or acceptable method to carry out the transaction or the product or service business of which the transaction is a part, and record or service or maintain the consumer’s account in the ordinary course of providing the financial service or financial product, or to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part, and includes the following:

(A) Providing the consumer or the consumer’s agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product.

(B) The accrual or recognition of incentives or bonuses associated with the transaction or communications to eligible existing consumers of the financial institution regarding the availability of those incentives and bonuses that are provided by the financial institution or another party involved in providing the financial service or product.

(C) With respect to a financial institution that has issued a credit account bearing the name of a company primarily engaged in retail sales or a name proprietary to a company primarily

1 *engaged in retail sales, providing the retailer, or licensees or*
2 *contractors of the retailer that provide products or services in the*
3 *name of the retailer and under a contract with the retailer, with*
4 *confidential consumer information concerning the credit account*
5 *in connection with the marketing or provision of the products or*
6 *services of the retailer and those licensees or contractors.*

7 (2) The disclosure is required or is ~~a one of the lawful method~~
8 *or appropriate methods* to enforce the rights of the financial
9 institution or of other persons engaged in carrying out the financial
10 transaction or providing the product or service.

11 (3) The disclosure is required, or is a usual, appropriate, or
12 acceptable method for insurance underwriting at the consumer's
13 request, for reinsurance *stop loss insurance, or excess loss*
14 *insurance* purposes, or for any of the following purposes as they
15 relate to a consumer's insurance:

16 (A) Account administration.

17 (B) Reporting, investigating, or preventing fraud or material
18 misrepresentation.

19 (C) Processing premium payments.

20 (D) Processing insurance claims.

21 (E) Administering insurance benefits, including utilization
22 review activities.

23 (F) ~~For internal research purposes~~ *Participating in research*
24 *projects.*

25 (G) As otherwise required or specifically permitted by federal
26 or state law.

27 (4) The disclosure is required, or is a usual, appropriate, or
28 acceptable method, in connection with the following:

29 (A) The authorization, settlement, billing, processing,
30 clearing, transferring, reconciling, or collection of amounts
31 charged, debited, or otherwise paid using a debit, credit or other
32 payment card, check, or account number, or by other payment
33 means.

34 (B) The transfer of receivables, accounts, or interests therein.

35 (C) The audit of debit, credit, or other payment information.

36 (i) "Financial product or service" means any product or
37 service that a financial holding company could offer by engaging
38 in an activity that is financial in nature or incidental to financial
39 activity under subsection (k) of Section 1843 of Title 12 of the
40 United States Code (the United States Bank Holding Company Act

of 1956). Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

~~(j) "Clearly and conspicuously" means displayed in a manner that is readily noticeable, readable, and understandable to consumers. Factors to be considered in determining whether a notice or disclosure is clear and conspicuous include prominence, proximity, absence of distracting elements, and clarity and understanding of the text disclosure.~~

(j) "*Clear and conspicuous*" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(k) "Widely distributed media" means publicly available information from a telephone book, a television or radio program, a newspaper or a Web site that is available to the general public on an unrestricted basis.

4052.5. This division shall be applicable to residents of this state. For purposes of this division, a person shall be considered a resident of this state if the person's last known mailing address, as shown in the records of the financial institution, is located in this state.

4053. (a) A financial institution shall not disclose to, or share a consumer's confidential consumer information with, any nonaffiliated third party unless the financial institution has provided written notice pursuant to subdivision ~~(e)~~ (d), to the consumer to whom the confidential consumer information relates and unless the financial institution has obtained a consent acknowledgment from the consumer pursuant to subdivision ~~(e)~~ (d), that authorizes the financial institution to disclose or share the confidential consumer information, *provided that nothing in this section shall prohibit the disclosure of confidential consumer information as provided in Section 4056.* A financial institution shall not deny a consumer a financial product or a financial service because the consumer has not provided the consent required by this subdivision to authorize the financial institution to disclose or share his or her confidential consumer information with any nonaffiliated third-party ~~provided that nothing in this section shall prohibit the disclosure of confidential consumer information as provided in Section 4056.~~

1 (b) (1) A financial institution shall not disclose to, or share a
2 consumer's confidential consumer information with, an affiliate
3 unless the financial institution clearly and conspicuously notifies
4 the consumer annually, commencing on ~~July 1~~ *October 1*, 2002,
5 in writing to the consumer pursuant to subdivision ~~(e)~~ *(d)* that the
6 information may be disclosed to an affiliate of the financial
7 institution *and the consumer has not directed that the confidential*
8 *consumer information not be disclosed.* A financial institution
9 does not disclose information to its affiliate merely because
10 employees of the financial institution and its affiliate have access
11 to common information systems or data bases, *or a consumer*
12 *accesses a Web site jointly operated or maintained under a*
13 *common name by or on behalf of the financial institution and its*
14 *affiliate(s),* provided that confidential consumer information is
15 used or otherwise disclosed only as permitted by this division.
16 ~~Pursuant to this notice the~~ *The* consumer shall be provided an
17 opportunity, before disclosure of information, *for* 45 days from the
18 date of postmark or other postal verification of mailing, ~~of the~~
19 ~~notice~~ *initial notice required by this division* to direct that the
20 confidential consumer information not be disclosed to an affiliate.
21 A consumer may direct at any time that his or her confidential
22 consumer information not be disclosed to an affiliate. When a
23 consumer directs that confidential consumer information not be
24 disclosed, that direction is in effect until otherwise stated by the
25 consumer. A financial institution shall not deny a consumer a
26 financial product or a financial service because the consumer has
27 directed pursuant to this subdivision that his or her confidential
28 consumer information not be disclosed to an affiliate provided that
29 nothing in this section shall prohibit the disclosure of confidential
30 consumer information as provided in Section 4056. A financial
31 institution may elect to comply with the requirements of
32 subdivision (a) with respect to disclosure of confidential consumer
33 information to an affiliate.

34 (2) If a financial institution does not have a continuing
35 relationship with a consumer other than the initial transaction in
36 which the product or service is provided, no annual disclosure
37 requirement exists pursuant to this section as long as the financial
38 institution provides the consumer with the form required by this
39 section at the time of the initial transaction.

(3) A financial institution shall comply with a consumer's directions concerning the sharing of his or her confidential consumer information within 45 days of receipt by the financial institution.

(c) Subdivision (a) of Section 4053 shall not prohibit the release of confidential consumer information by a financial institution with assets of up to and including \$5 billion, annually indexed to the Consumer Price Index, and with whom the consumer has a relationship to a nonaffiliated financial institution or institutions for purposes of jointly offering a financial product or financial service pursuant to a written joint marketing agreement with the financial institution that receives the confidential consumer information provided that all of the following requirements are met:

(1) The financial product or service offered is a product or service of, and is provided by, at least one of the financial institutions that is a party to the joint marketing agreement.

(2) The financial product or service is jointly offered, endorsed, or sponsored, and prominently identifies for the consumer the financial institutions that release the confidential consumer information and the financial institutions that receive that information.

(3) The joint marketing agreement provides that the financial institution that receives that confidential consumer information is required to maintain the confidentiality of the information and is prohibited from disclosing or using the information other than to carry out the joint marketing that is the subject of the written agreement.

(4) The financial institution that releases the confidential consumer information has complied with subdivision (b) of Section 4053 and the consumer has not directed that confidential consumer information not be disclosed. The financial institution may, at its option, choose instead to comply with the requirements of subdivision (a) of Section 4053.

Nothing in this subdivision shall prohibit a financial institution from disclosing or sharing confidential consumer information as otherwise specifically permitted by this division.

If the financial institution releasing the confidential consumer information, or the nonaffiliated financial institution receiving the information, uses or discloses any the information in violation of

1 *the written agreement required by this subdivision, either or both*
2 *financial institutions shall be deemed to be in violation of this*
3 *division.*

4 (d) (1) The following form shall be sent by the financial
5 institution to the consumer with a self-addressed, ~~stamped,~~
6 *postage paid* return envelope, *that clearly states in 16-point*
7 *boldface type “IMPORTANT PRIVACY CHOICES”* so that the
8 consumer may make a decision *and provide direction to the*
9 *financial institution* regarding the sharing of his or her confidential
10 consumer information:

11
12 ~~IMPORTANT PRIVACY CHOICES FOR CALIFORNIANS~~

13
14 ~~Under California law, you have a right to restrict the sharing of~~
15 ~~your financial information within our family of companies~~
16 ~~regarding your consumer purchases, account balances, and other~~
17 ~~personal information. We must also get your permission to share~~
18 ~~your financial information outside our family of companies. To~~
19 ~~exercise your choices call this toll-free telephone number _____,~~
20 ~~contact us via the Internet, or mark and sign the form below and~~
21 ~~send it back to us in the self-addressed postage paid envelope.~~

22
23 ~~YOU MAY RETURN THIS FORM AT ANY TIME AND YOUR~~
24 ~~CHOICES WILL REMAIN IN EFFECT UNLESS YOU~~
25 ~~REQUEST A CHANGE. HOWEVER, IF WE DO NOT HEAR~~
26 ~~FROM YOU WITHIN 45 DAYS, WE MAY SHARE YOUR~~
27 ~~FINANCIAL INFORMATION WITHIN OUR FAMILY OF~~
28 ~~COMPANIES BUT WE MAY NOT SHARE YOUR~~
29 ~~FINANCIAL INFORMATION OUTSIDE OUR FAMILY OF~~
30 ~~COMPANIES.~~

Please mark your choices below. See the enclosed for further information.

If you want to maximize your privacy protection under California law:

☐ I do not want you to share my financial information within your
— family of companies or with outside companies.

If you want to authorize the sharing of information, indicate your privacy
choices below:

☐ I want you to share my financial information such as my address,
— telephone number, purchases, account balances and other personal
— information with outside companies.

☐ You may share my financial information but I do not wish to be
— marketed through:

_____ Telephone _____ Mail _____ E-mail

Name: _____ Account Number: _____

Signature: _____

(d) When a financial institution with no more than five affiliates and collective assets of up to and including \$1 billion enters into an agreement with a third party to offer, on an exclusive basis, a financial service or financial product to its customers, it may share a consumer's confidential consumer information on an exclusive basis with the third party that offers the financial service or financial product in the name of the financial institution, provided that the offer clearly states the name of the financial institution that is a party to the making of the offer, and provided that the third party is prohibited from disclosing or otherwise using the customer information except as necessary to provide information about the financial service or financial product. For purposes of this subdivision, "third party" means financial institutions as defined in Section 4052. For purposes of this subdivision, "exclusive basis" means a single outside service or product offered for each separate category of financial service or

~~financial product provided in the name of the financial institution with no more than five affiliates and collective assets of up to and including \$1 billion. The disclosure of confidential consumer information pursuant to this subdivision shall be subject to the notice requirements of subdivision (b) of this section.~~

IMPORTANT PRIVACY CHOICES FOR CALIFORNIANS

As a California consumer you have rights beyond those offered under federal law to control the sharing of some of your personal information among financial institutions

You have the following rights to restrict the sharing of some information with affiliated and outside companies:

1. (A) ☐ *I WANT TO RESTRICT THE SHARING OF MY PERSONAL AND FINANCIAL INFORMATION TO THE GREATEST EXTENT POSSIBLE.*

This means that I do not authorize you to share my personal and financial information with affiliates or with outside companies. I understand this choice will not prevent the sharing of my information as necessary to administer my account or policy, but this may lead to my being offered fewer products and services.

(B) *(A financial institution shall select the appropriate box from Section 2 of this form)*

2. (A) *SHARING INFORMATION WITH AFFILIATED COMPANIES:*
Unless you prohibit us from doing so, we may share some personal and financial information about you with affiliated companies.

- ☐ *I prohibit you from sharing my personal and financial information with affiliated companies.
(This option shall be selected by a financial institution disclosing information pursuant to paragraph (1) of subdivision (b) of Section 4053)*

(B) *SHARING INFORMATION WITH OUTSIDE FINANCIAL COMPANIES WITH WHOM WE CONTRACT:*

Unless you prohibit us from doing so, we may share some personal and financial information about you with outside financial companies to offer you financial products and services.

- ☐ *I prohibit you from sharing my personal and financial information with outside financial companies with whom you contract to provide financial products and services.
(This option shall be selected by a financial institution disclosing information pursuant to subdivision (c) of Section 4053)*

(C) *SHARING INFORMATION WITH OUTSIDE COMPANIES:*

Unless you authorize us to do so, we may not share personal and financial information about you with outside companies.

- ☐ *I authorize you to share my personal and financial information with outside companies.
(This option shall be selected by a financial institution disclosing information pursuant to subdivision (a) of Section 4053)*

(D) *SHARING INFORMATION WITH AFFILIATED COMPANIES:*

If you want us to share some personal and financial information about you with affiliated companies, please inform us.

- ☐ *I allow you to share my personal and financial information with affiliated companies.
(This option shall be selected by a financial institution that elects to comply with the requirements of subdivision (a) of Section 4053)*

You may return this form at any time and your choices will remain in effect unless you request a change. However, if we do not hear from you within 45 days of sending this notice to you, we may share some of your information with affiliated companies, but may not share this information with outside companies.

Name: _____

Account or Policy Number(s), to be filled in by consumer: _____

Signature: _____

To exercise your choices do one of the following:

(1) Fill out, sign, and send back this form in the

preaddressed, postage-paid return envelope, or

(2) Call this toll-free number _____.

(3) Reply electronically by contacting us through the following Internet option:

If a consumer selects box (A) in Section 1 of this form, that choice shall supersede all other choices.

(2) If form required under this section is mailed with information required by the federal Gramm-Leach-Bliley Act, or other mailing that is not a bill, it shall be the first page of the mailing. The form shall be on letter sized paper and the text, excluding the title, shall be in at least 12-point type. The phrase "Important privacy choices for Californians" shall be in at least 16-point boldface type. The form required under this section shall include the toll-free telephone number that the financial institution sending the form shall establish.

(3) A financial institution shall comply with a consumer's directions concerning the sharing of his or her confidential consumer information within 45 days of receipt by the financial institution.

(e) Nothing in this division shall prohibit a financial institution from marketing its own products and services or the products and services of others to the financial institution's own customers, provided no confidential consumer information is disclosed

~~except as permitted by Section 4056.~~ *services of nonaffiliated third parties to customers of the financial institution as long as (1) confidential consumer information is not disclosed in connection with the delivery of the applicable marketing materials to those customers except as permitted by Section 4056 and (2) in cases in which the applicable nonaffiliated third party may extrapolate confidential consumer information about the consumer responding to those marketing materials, the applicable nonaffiliated third party has signed a contract with the financial institution under the terms of which (A) the nonaffiliated third party is prohibited from retaining or using that information for any purpose, and (B) the financial institution has the right by audit, inspections, or other means to verify the nonaffiliated third party's compliance with that contract.*

(f) Except as otherwise provided in this division, an entity that receives confidential consumer information from a financial institution under this division shall not disclose this information to any other entity, unless the disclosure would be lawful if made directly to the other entity by the financial institution.

4054. (a) Nothing in this division shall require a financial institution to provide a written notice to a consumer pursuant to Section 4053 if the financial institution does not disclose confidential consumer information to any nonaffiliated third-party or to any affiliate, except as provided in Section 4056.

~~(b) A financial institution shall provide notices and consent acknowledgments required by this division to consumers as separate documents that are easily identifiable and distinguishable from other documents that otherwise may be provided to a consumer.~~ A notice provided to a member of a household pursuant to Section 4053 shall be considered notice to all members of that household unless that household contains another individual who also has a separate account with the financial institution.

(c) (1) *The requirement to send a notice to a consumer may be fulfilled by electronic means if the following requirements are met:*

(A) *The notice, and the manner in which it is sent, meets all of the requirements for notices that are required by law to be in writing, as set forth in Section 101 of the federal Electronic Signatures in Global and National Commerce Act.*

1 (B) All other requirements applicable to the notice, as set forth
2 in this division, are met, including but not limited to, requirements
3 concerning content, timing, form, and delivery.

4 (C) The notice shall be delivered to the consumer in a form the
5 consumer may keep.

6 (2) A notice that is made available to a consumer, and is not
7 delivered to the consumer, does not satisfy the requirements of
8 paragraph (1).

9 (3) Any electronic consumer reply to an electronic notice sent
10 pursuant to this division is effective. A person that electronically
11 sends a notice required by this division to a consumer may not by
12 contract, or otherwise, eliminate the effectiveness of the
13 consumer's electronic reply.

14 (4) This division modifies the provisions of Section 101 of the
15 federal Electronic Signatures in Global and National Commerce
16 Act. However, it does not modify, limit, or supersede the provisions
17 of subsection (c), (d), (e), (f), or (h) of Section 101 of the federal
18 Electronic Signatures in Global and National Commerce Act, nor
19 does it authorize electronic delivery of any notice of the type
20 described in subsection (b) of Section 101 of that federal act.

21 (d) In meeting the requirements of this division, a financial
22 institution may utilize a form using substantially the same
23 language as specified in subdivision (c) of Section 4053 if that
24 similar form has received prior approval by the Attorney General.
25 If the Attorney General has not taken action within 60 days of
26 receipt of a request for approval of a similar form submitted by a
27 financial institution pursuant to this subdivision, the form shall be
28 deemed to be approved.

29 4054.6. When a financial institution and a membership
30 organization, tax exempt charitable organization, or a
31 professional sports team that is not a financial institution have an
32 agreement to issue a credit card in the name of the membership
33 organization, tax exempt charitable organization, or the
34 professional sports team ("affinity card"), the financial institution
35 shall be permitted to disclose, to the membership organization, tax
36 exempt charitable organization, or professional sports team in
37 whose name the card is issued, the names and addresses of the
38 financial institution's customers in receipt of the affinity card if all
39 of the following requirements are satisfied:

1 (a) *The financial institution has provided the notice required by*
2 *subdivision (b) of Section 4053 and the customer has not directed*
3 *that confidential consumer information not be disclosed.*

4 (b) *The financial institution has a contractual agreement with*
5 *the membership, tax exempt charitable organization, or*
6 *professional sports team organization that requires the*
7 *membership organization to maintain the confidentiality of the*
8 *confidential consumer information and requires the membership*
9 *organization, tax exempt charitable organization, or professional*
10 *sports team to use the information exclusively for the purpose of*
11 *verifying membership or the member's address.*

12 (c) *The customer list is not disclosed in any way that reveals or*
13 *permits extrapolation of confidential consumer information about*
14 *any customer on the list.*

15 4055. (a) This division shall not apply to disclosures between
16 a member-owned financial institution and its affiliates, or between
17 like affiliates, provided that the disclosure is primarily for
18 customer service purposes and not for marketing purposes, and
19 that the financial institution meets all of the following
20 requirements:

21 (1) A majority of the financial institution's customers are
22 members of the United States military services, veterans of the
23 United States military services, current or former spouses or
24 dependents of these persons and the primary purpose of the
25 financial institution is to serve these persons.

26 (2) The financial institution and its affiliates are in compliance
27 with Title V of the federal Financial Services Modernization Act.

28 (3) Customers of the financial institution and its affiliates are
29 informed in writing on an annual basis of the opportunity to opt out
30 of information sharing among the institution and its affiliates for
31 marketing purposes.

32 (b) For purposes of this section, "marketing purposes" means
33 for use in unsolicited telemarketing, unsolicited direct mail, or
34 unsolicited commercial electronic mail for the primary purpose of
35 encouraging the purchase or rental of, or investment in, property,
36 goods, or services. For purposes of this section, "marketing
37 purposes" shall not include communications to a person with that
38 person's prior express invitation or permission, or in response to
39 a communication from such person.

1 4056. (a) This division shall not apply to information that is
2 not personally identifiable to a particular person.

3 (b) Sections 4053 and 4054 shall not prohibit the release of
4 confidential consumer information under the following
5 circumstances:

6 (1) The confidential consumer information is necessary to
7 effect, administer, or enforce a transaction requested or authorized
8 by the consumer, or in connection with servicing or processing a
9 financial product or service requested or authorized by the
10 consumer, or in connection with maintaining or servicing the
11 consumer's account with the financial institution, or with another
12 entity as part of a private label credit card program or other
13 extension of credit on behalf of such entity, or in connection with
14 a proposed or actual securitization or secondary market sale,
15 including sales of servicing rights, *or similar transactions* related
16 to a transaction of the consumer.

17 (2) The confidential consumer information is released with the
18 consent of or at the direction of the consumer.

19 (3) The confidential consumer information is:

20 (A) Released to protect the confidentiality or security of the
21 financial institution's records pertaining to the consumer, the
22 service or product, or the transaction therein.

23 (B) Released to protect against or prevent actual or potential
24 fraud, identity theft, unauthorized transactions, claims, or other
25 liability.

26 (C) Released for required institutional risk control, or for
27 resolving customer disputes or inquiries.

28 (D) Released to persons holding a legal or beneficial interest
29 relating to the consumer, *including debt collection*.

30 (E) Released to persons acting in a fiduciary or representative
31 capacity on behalf of the consumer.

32 (4) The confidential consumer information is released to
33 provide information to insurance rate advisory organizations,
34 guaranty funds or agencies, applicable rating agencies of the
35 financial institution, persons assessing the institution's
36 compliance with industry standards, and the institution's
37 attorneys, accountants, and auditors.

38 (5) The confidential consumer information is released to the
39 extent specifically required or specifically permitted under other
40 provisions of law and in accordance with the Right to Financial

1 Privacy Act of 1978 (12 U.S.C. Sec. 3401 et seq.), to law
2 enforcement agencies, including a federal functional regulator, the
3 Secretary of the Treasury with respect to subchapter II of Chapter
4 53 of Title 31, and Chapter 2 of Title I of Public Law 91-508 (12
5 U.S.C. Secs. 1951-1959), the California Department of Insurance,
6 or the Federal Trade Commission, and self-regulatory
7 organizations, *or for an investigation on a matter related to public*
8 *safety.*

9 (6) The confidential consumer information is released (A) to a
10 consumer reporting agency in accordance with the Fair Credit
11 Reporting Act (15 U.S.C. Sec. 1681 et seq.); or (B) from a
12 consumer report reported by a consumer reporting agency.

13 (7) The confidential consumer information is released in
14 connection with a proposed or actual sale, merger, transfer, or
15 exchange of all or a portion of a business or operating unit if the
16 disclosure of confidential consumer information concerns solely
17 consumers of the business or unit.

18 (8) The confidential consumer information is released to
19 comply with federal, state, or local laws, rules, and other
20 applicable legal requirements; to comply with a properly
21 authorized civil, criminal, or regulatory investigation or subpoena
22 or summons by federal, state, or local authorities; or to respond to
23 judicial process or government regulatory authorities having
24 jurisdiction over the financial institution for examination,
25 compliance, or other purposes as authorized by law.

26 (9) When a financial institution is reporting a known or
27 suspected instance of elder or dependent adult financial abuse or
28 is cooperating with a local adult protective services agency
29 investigation of known or suspected elder or dependent adult
30 financial abuse pursuant to Article 3 (commencing with Section
31 15630) of Chapter 11 of Part 3 of Division 9 of the Welfare and
32 Institutions Code.

33 (10) The confidential consumer information is released to *an*
34 *affiliate or* a nonaffiliated third party in order for the *affiliate or*
35 nonaffiliated third party to perform services for, or functions on
36 behalf of, the financial institution in connection with the financial
37 institution's products and services, such as mailing services, data
38 processing or analysis, or customer surveys, provided that all of
39 the following requirements are met:

1 (A) The services to be performed by the *affiliate or*
2 nonaffiliated third party would be lawful if performed by the
3 financial institution.

4 (B) There is a written contract between the *affiliate or*
5 nonaffiliated third party and the financial institution that prohibits
6 the *affiliate or* nonaffiliated third party, *as the case may be*, from
7 disclosing or using the confidential consumer information other
8 than to carry out the purpose for which the financial institution
9 disclosed the information, as set forth in the written contract.

10 (C) The confidential consumer information provided to the
11 *affiliate or* nonaffiliated third party is limited to that which is
12 reasonably necessary for the *affiliate or* nonaffiliated third party
13 to perform the services contracted for on behalf of the financial
14 institution.

15 (11) The confidential consumer information is released to
16 identify or locate missing and abducted children, witnesses,
17 criminals and fugitives, parties to lawsuits, parents delinquent in
18 child support payments, organ and bone marrow donors, pension
19 fund beneficiaries, and missing heirs.

20 (12) *The confidential consumer information is released to a*
21 *real estate appraiser licensed or certified by the state for*
22 *submission to central data repositories such as the California*
23 *Market Data Cooperative, and the confidential consumer*
24 *information is compiled strictly to complete other real estate*
25 *appraisals and is not used for any other purpose.*

26 (c) Nothing in this division is intended to change existing law
27 relating to access by law enforcement agencies to information held
28 by financial institutions.

29 ~~4056.5. (a) The restrictions on disclosure and use of~~
30 ~~confidential consumer information, and the requirement for~~
31 ~~notification, disclosure, and opportunity for the consumer to either~~
32 ~~direct that the confidential consumer information not be disclosed~~
33 ~~or provided prior written consent, as provided in this division, do~~

34 4056.5. (a) *The provisions of this division do not apply to any*
35 *person or entity that meets paragraph (1) or (2) except when*
36 *confidential consumer information is or will be shared with an*
37 *affiliate or nonaffiliated third party.*

38 (1) The person or entity is licensed in one or both of the
39 following categories and is acting within the scope of the
40 respective license *or certificate*:

(A) As an insurance producer, licensed pursuant to Chapter 5 (commencing with Section 1621), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Division 1 of the Insurance Code, *as a registered investment adviser pursuant to Chapter 3 (commencing with Section 25230) of Part 3 of Division 1 of Title 4 of the Corporations Code, or as an investment adviser pursuant to Section 202(a)(11) of the federal Investment Advisers Act of 1940.*

(B) Is licensed to sell securities by the United States Securities and Exchange Commission.

(2) The person or entity meets the requirements in paragraph (1) and has a written contractual agreement with another person or entity described in paragraph (1) and the contract clearly and explicitly includes the following:

(A) The rights and obligations between the licensees arising out of the business relationship relating to insurance or securities transactions.

(B) An explicit limitation on the use of confidential consumer information about a consumer to transactions authorized by the contract and permitted pursuant to this division.

(C) A requirement that transactions specified in the contract fall within the scope of activities permitted by the licenses of the parties.

(b) The restrictions on disclosure and use of confidential consumer information, and the requirement for notification and disclosure provided in this division, shall not limit the ability of insurance producers and brokers to respond to written or electronic, including telephone, requests from consumers seeking price quotes on insurance products and services.

~~4057. (a) Any financial institution that negligently discloses or shares confidential consumer information in violation of this division shall be liable, irrespective of the amount of damages suffered by the consumer as a result of that violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation.~~

~~(b) Any financial institution that knowingly and willfully obtains, discloses, or uses confidential consumer information in violation of this division shall be liable upon a first violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation, or upon a second~~

~~violation for an administrative fine or civil penalty not to exceed ten thousand dollars (\$10,000) per violation, or upon a third or subsequent violation for an administrative fine or civil penalty not to exceed twenty five thousand dollars (\$25,000) per violation.~~

~~(e) Any financial institution that knowingly and willfully obtains, discloses, or uses confidential consumer information in violation of this division for financial gain shall be liable upon a first violation for an administrative fine or civil penalty not to exceed five thousand dollars (\$5,000) per violation, or upon a second violation for an administrative fine or civil penalty not to exceed twenty five thousand dollars (\$25,000) per violation, or upon a third or subsequent violation for an administrative fine or civil penalty not to exceed two hundred fifty thousand dollars (\$250,000) per violation and shall be subject to disgorgement of any proceeds or other consideration obtained as a result of the violation.~~

~~(d) Nothing in this subdivision shall be construed as authorizing an administrative fine or civil penalty under both paragraphs (2) and (3) for the same violation.~~

~~(e) A financial institution that negligently discloses or shares confidential consumer information in violation of this division shall be liable, irrespective of the amount of damages suffered by the consumer as a result of that violation, for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation. However, the total civil penalty awarded pursuant to this subdivision shall not exceed five hundred thousand dollars (\$500,000) per occurrence.~~

~~(b) A financial institution that knowingly and willfully obtains, discloses, shares, or uses confidential consumer information in violation of this division shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation.~~

~~(c) In the event a violation of this division results in the identity theft of a consumer, the civil penalties set forth in this section shall be doubled.~~

~~(d) This section shall become operative on and after July 1, 2003, for acts in violation of this division that occur on and after July 1, 2003.~~

4058. This division shall not be construed in a manner that is inconsistent with the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.).

4059. The provisions of this division shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this division shall not be affected thereby.

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